

**IN THE UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

JANE W, in her individual capacity, and in her capacity as the personal representative of the estates of her relatives, James W, Julie W and Jen W;

JOHN X, in his individual capacity, and in his capacity as the personal representative of the estates of his relatives, Jane X, Julie X, James X and Joseph X;

JOHN Y, in his individual capacity;

AND JOHN Z, in his individual capacity,

Plaintiffs,

v.

MOSES W. THOMAS,

Defendant.

Case No. 2:18-CV-00569-PBT

**PLAINTIFFS' MOTION TO COMPEL RESPONSES TO PLAINTIFFS' FIRST SET OF  
DOCUMENT REQUESTS AND FIRST SET OF INTERROGATORIES**

Plaintiffs Jane W, John X, John Y, and John Z ("Plaintiffs") respectfully move this Court pursuant to Federal Rule of Civil Procedure 37(a) and Local Civil Rule 26.1(g) to compel Defendant Moses W. Thomas ("Defendant") to produce documents pursuant to Plaintiffs' First Set of Document Requests and to answer Plaintiffs' First Set of Interrogatories (the "Requests") without objection. For the following reasons, this Court should grant the instant motion:

1. The facts in support of this motion are contained in the attached Declaration of Elizabeth Nielsen, which is incorporated by reference.

2. On October 11, 2019, Plaintiffs served the Requests on Defendant by email to Defendants' counsel, Nixon T. Kannah. *See* Nielsen Decl. ¶ 5; Ex. B.<sup>1</sup>

3. Pursuant to Federal Rules of Civil Procedure 33(b)(2) and 34(b)(2)(A), Defendant was obligated to respond by November 12, 2019.

4. Defendant did not serve responses and objections, nor did Defendant request an extension or otherwise meet-and-confer with Plaintiffs. Nielsen Decl. ¶¶ 6–7.

5. Plaintiffs attempted on five occasions between November 12 and December 16, 2019, by written and telephonic requests, to communicate with Defendant's counsel concerning Defendant's failure or refusal to serve responses to the Requests. Nielsen Decl. ¶¶ 8–12; Ex. C, D, E. Plaintiffs' counsel's diligent efforts were met with complete silence until December 16, when Defendant's counsel informed Plaintiffs' counsel that he has been unable to contact his client for 90 days. Nielsen Decl. ¶¶ 8–13; Ex. F. Defendant's counsel confirmed the same in a telephone call on December 17. Nielsen Decl. ¶ 15.

6. Defendant's unexcused silence leaves Plaintiffs with no alternative but to seek an order to compel.

7. By reason of the aforesaid failures or refusals to respond, Defendant has waived any procedural right to object to the requested discovery. *See* Fed. R. Civ. P. 33(b)(2), (b)(4); Fed. R. Civ. P. 34(b)(2)(A).

Accordingly, Plaintiffs request that the Court issue an order pursuant to Rule 37 compelling Defendant to produce documents pursuant to Plaintiffs' First Set of Document Requests and to answer Plaintiffs' First Set of Interrogatories within 30 calendar days from the entry of the order.

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<sup>1</sup> The parties agreed to service of discovery documents by email on January 31, 2019. Nielsen Decl. ¶ 4; Ex. A.

**CONCLUSION**

For the foregoing reasons, the Court should compel Defendant to produce documents pursuant to Plaintiffs' First Set of Document Requests and to answer First Set of Interrogatories within 30 days of entry of an order granting this motion, and impose such other relief as the court deems appropriate to assure compliance with its order.

Dated December 17, 2019

Respectfully submitted,

/s/ Carmen K. Cheung

/s/ Catherine Amirfar

Nushin Sarkarati\*  
Carmen K. Cheung\*  
Elzbieta T. Matthews\*  
CENTER FOR JUSTICE AND ACCOUNTABILITY  
One Hallidie Plaza, Suite 406  
San Francisco, CA 94102  
T: +1-415-544-0444  
F: +1-415-544-0456

Catherine Amirfar\*  
Elizabeth Nielsen\*  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, NY 10022  
T: +1-212-909-6000  
F: +1-212-909-6836

/s/ Laurence S. Shtasel

Laurence Shtasel  
Pennsylvania Bar No. 58528  
James T. Giles  
Pennsylvania Bar No. 4425  
Huaou Yan  
Pennsylvania Bar No. 324705  
BLANK ROME  
One Logan Square  
130 North 18th Street  
Philadelphia, PA 19103  
T: +1-215-569-5500  
F: +1-215-569-5555

*Counsel for Plaintiffs*

\* Admitted *pro hac vice*